

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL V. RODRIGUEZ,  
Plaintiff,

v.

A. LUCIANO MARTINEZ,  
Defendant.

Case No. 21-01745 EJD (PR)

**ORDER OF PARTIAL DISMISSAL  
AND OF SERVICE; DIRECTING  
DEFENDANT TO FILE  
DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION; INSTRUCTIONS TO  
CLERK**

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against a prison guard at Salinas Valley State Prison (“SVSP”) where he is currently incarcerated. Dkt. No. 1. Plaintiff’s motion for leave to proceed in forma pauperis will be addressed in a separate order. Dkt. No. 6.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune  
2 from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally  
3 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff’s Claims**

9 Plaintiff claims that Defendant A. Luciano Martinez, a prison guard at SVSP,  
10 smashed his head in the cell door “with the intent to cause serious or irreparable harm.”  
11 Dkt. No. 1 at 3. Plaintiff claims this injury caused him to have seizures and “eye sight  
12 impairment.” Id. Plaintiff claims that “[g]uards have the right to be sued... and not act  
13 with negligence,” and that Defendant caused cruel and unusual punishment. Id. Plaintiff  
14 seeks damages. Id.

15 The treatment a convicted prisoner receives in prison and the conditions under  
16 which he is confined are subject to scrutiny under the Eighth Amendment. Helling v.  
17 McKinney, 509 U.S. 25, 31 (1993). “After incarceration, only the unnecessary and wanton  
18 infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth  
19 Amendment.” Whitley v. Albers, 475 U.S. 312, 319 (1986) (ellipsis in original) (internal  
20 quotation and citation omitted). What is required to establish an unnecessary and wanton  
21 infliction of pain varies according to the nature of the alleged constitutional violation. Id.  
22 at 320. Where prison officials stand accused of using excessive force in violation of the  
23 Eighth Amendment, the core judicial inquiry is whether force was applied in a good-faith  
24 effort to maintain or restore discipline, or maliciously and sadistically to cause harm.  
25 Hudson v. McMillian, 503 U.S. 1, 6-7 (1992).

26 Plaintiff’s claim that Defendant Martinez deliberately smashed his head with the  
27 cell door with the intent to cause serious harm is sufficient to state an excessive force claim

under the Eighth Amendment. Id. Although the complaint does not contain all the details of the underlying incident, Plaintiff indicates that he exhausted this claim through grievance Log No. SVSP-20-00874, which was denied at the third level of appeal on February 2, 2021. Id. at 2. This information is sufficient to give Defendant notice of the nature of the claim against him. See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (pleading sufficient where it gives defendant “fair notice of what the... claim is and the grounds upon which it rests.”)

On the other hand, Plaintiff’s allegation that Defendant acted negligently fails to state a claim because neither negligence nor gross negligence is actionable under § 1983 in the prison context. See Farmer v. Brennan, 511 U.S. 825, 835-36 & n.4 (1994); Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (gross negligence insufficient to state claim for denial of medical needs to prisoner). Accordingly, the negligence claim is dismissed for failure to state a cognizable claim.

### CONCLUSION

For the reasons set forth above, the Court orders as follows:

1. This action shall proceed on the Eighth Amendment excessive force claim against Defendant A. Luciano Martinez. All other claims are **DISMISSED** for failure to state a claim for relief.

2. The following defendant at SVSP shall be served:

a. **Correctional Officer A. Luciano Martinez**

Service on the listed defendant(s) shall proceed under the California Department of Corrections and Rehabilitation’s (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve on CDCR via email the following documents: the operative complaint and any attachments thereto, (Dkt. No. 1), this order of service, a CDCR Report of E-Service Waiver form and a summons. The clerk also shall serve a copy of this order on the plaintiff.

1 No later than 40 days after service of this order via email on CDCR, CDCR shall  
2 provide the court a completed CDCR Report of E-Service Waiver advising the court which  
3 defendant(s) listed in this order will be waiving service of process without the need for  
4 service by the United States Marshal Service (USMS) and which defendant(s) decline to  
5 waive service or could not be reached. CDCR also shall provide a copy of the CDCR  
6 Report of E-Service Waiver to the California Attorney General's Office which, within 21  
7 days, shall file with the court a waiver of service of process for the defendant(s) who are  
8 waiving service.

9 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for  
10 each defendant who has not waived service according to the CDCR Report of E-Service  
11 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205  
12 forms and copies of this order, the summons and the operative complaint for service upon  
13 each defendant who has not waived service. The clerk also shall provide to the USMS a  
14 copy of the CDCR Report of E-Service Waiver.

15 3. No later than **ninety-one (91) days** from the date this order is filed,  
16 Defendants shall file a motion for summary judgment or other dispositive motion with  
17 respect to the claims in the complaint found to be cognizable above.

18 a. Any motion for summary judgment shall be supported by adequate  
19 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
20 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
21 qualified immunity found, if material facts are in dispute. If any Defendant is of the  
22 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
23 Court prior to the date the summary judgment motion is due.

24 b. **In the event Defendants file a motion for summary judgment, the**  
25 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
26 **warnings under Rand v. Rowland, 154 F.3d 952,963 (9th Cir. 1998) (en banc). See**  
27 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

1           4.       Plaintiff's opposition to the dispositive motion shall be filed with the Court  
2 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'  
3 motion is filed.

4           Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and  
5 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment  
6 must come forward with evidence showing triable issues of material fact on every essential  
7 element of his claim). Plaintiff is cautioned that failure to file an opposition to  
8 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to  
9 the granting of the motion, and granting of judgment against Plaintiff without a trial. See  
10 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18  
11 F.3d 651, 653 (9th Cir. 1994).

12           5.       Defendants shall file a reply brief no later than **fourteen (14) days** after  
13 Plaintiff's opposition is filed.

14           6.       The motion shall be deemed submitted as of the date the reply brief is due.  
15 No hearing will be held on the motion unless the Court so orders at a later date.

16           7.       All communications by the Plaintiff with the Court must be served on  
17 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true  
18 copy of the document to Defendants or Defendants' counsel.

19           8.       Discovery may be taken in accordance with the Federal Rules of Civil  
20 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
21 Rule 16-1 is required before the parties may conduct discovery.

22           9.       It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
23 court informed of any change of address and must comply with the court's orders in a  
24 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
25 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

26           10.      Extensions of time must be filed no later than the deadline sought to be  
27 extended and must be accompanied by a showing of good cause.

**IT IS SO ORDERED.**

**Dated:** 7/29/2021



EDWARD J. DAVILA  
United States District Judge

United States District Court  
Northern District of California

Order of Part. Dism. And of Service  
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